
By Brian W. Ohm

2017 Wisconsin Act 67, signed into law by Governor Walker in November 2017, adds new sections to the Wisconsin Statutes affecting how state and local regulations affect nonconforming or substandard lots.

Undoing the Murr Decision

The new law was enacted in response to the United States Supreme Court’s June 2017 decision in Murr v. Wisconsin. The Murr decision, involved a provision in the St. Croix County Zoning Ordinance that merged two substandard lots (referred to as “nonconforming lots” in many local ordinances) under common ownership for purposes of the application of the zoning ordinance and prohibited the owner from selling one of the substandard lots. The County’s ordinance followed rules promulgated by the Wisconsin Department of Natural Resources for protecting the Lower St. Croix River after its designation by Congress as a National Wild and Scenic River. The U.S. Supreme Court decision articulated a new test for determining the relevant parcel for regulatory takings analysis and concluded St. Croix County’s lot merger provision did not constitute a regulatory taking requiring the payment of just compensation.

Act 67 then prohibits cities, villages, towns, and counties from enacting or enforcing ordinances or taking any other action that prohibits a property owner from conveying an ownership interest in a substandard lot or from using a substandard lot as a building site if the substandard lot does not have any structures placed partly upon an adjacent lot and the substandard lot is developed to comply with all other ordinances of the political subdivision. Wis. Stat. § 66.10015(2)(e).

Lot Merger Prohibited

Finally, Act 67 prohibits cities, villages, towns, counties, and state agencies from enacting or enforcing any ordinance or administrative rule or taking any other action that requires one or more lots to be merged with another.
lot, for any purpose, without the consent of the owners of the lots that are to be merged. Wis. Stat. § 66.10015(4).

The take away

While local governments did not need to make changes their ordinances in response to the Murr decision, Act 67, effective November 28th, should prompt local governments and state agencies to review their ordinances and rules as follows:

+ Cities, villages, towns, counties, and state agencies need to review their ordinances and rules to insure they do not require the merger of lots (both substandard lots and lots that conform to current ordinances and rules) without the consent of the owners of the lots that are to be merged.

+ Cities, villages, towns and counties need to review their ordinances and practices related to substandard lots to ensure that they do not prohibit a property owner from selling or otherwise conveying an ownership interest in a substandard lot to another person or entity.

+ In addition, cities, villages, towns and counties need to review their ordinances and practices to ensure they allow the use of a substandard lot as a building site if the substandard lot has never had a structure straddling the substandard lot and an adjacent lot. Any development on the substandard lot must conform to all other applicable ordinances. The application of other ordinances may limit what can be built on a substandard lot.

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